Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Promoting the Availability of Diverse and	)	MB Docket No. 16-41
Independent Sources of Video Programming	)	

COMMENTS OF PUBLIC KNOWLEDGE

Yosef Getachew
Dallas Harris

PUBLIC KNOWLEDGE
1818 N St. NW
Suite 410
Washington, DC 20036
dharris@publicknowledge.org

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Table of Contents

I. Introduction 1

II. Imbalances in Bargaining Power Lead to Market Conditions That Place Independent Programmers at a Disadvantage 3

A. Some MVPDs Can Exert Monopsony Power Over Independent Programmers 4

B. Larger Programmers Can Also Use Their Leverage To Obtain Favorable Terms That Ultimately Harm Independent Programmers 7

C. The True Harm is Not Caused By The Contract Terms Per Se, But By Exerting Leverage In An Unbalanced Negotiation 10

III. The Commission Should Consider Crafting a Flexible Rule to Target Undesirable Practices 10

A. The Harms the Commission Seeks to Mitigate Would not be Adequately Addressed by a Bright Line Rule 11

B. Implementing a Contextual Approach is Feasible and Promotes Competition 13

IV. Conclusion 14

I. Introduction

Public Knowledge submits these Comments in response to the Federal Communications Commission's ("FCC" or "Commission") September 29, 2016 *Notice of Proposed Rulemaking*[1] regarding the use of unconditional most favored nation (MFN) clauses and unreasonable alternative distribution method (ADM) provisions. Public Knowledge fully supports the Commission's efforts to provide relief to independent programmers in the video marketplace. Increasing the diversity of viewpoints in the video market place, including racial, political, and gender based programming is beneficial to both content creators and consumers. It has become increasingly obvious that incumbent MVPDs hold back tomorrow's competition through economic coercion, forcing programmers to agree to limit who they sell to and how they sell it, in an effort to limit new services' ability to compete with traditional pay TV head on. Changes to the system would help content creators get a foot in the door and alleviate the strong-arm incumbents wield over up-and-comers. The immediate benefit to them is passed on to minority communities who want to see their story told from their point of view, but have so far been relegated to stereotypes in mainstream media.

So, too, do the benefits pass on to innovators who, spurred on by the ability to branch out, are evermore experimenting with yet-unimagined new avenues to content and technology experiences. It passes to communities – children growing up who want to see themselves represented on-screen but right now find very few choices on current cable line-ups. And when the nascent technologies and content take root and can really bloom, it may also awaken more traditional outlets to the fact that there is, indeed, an appetite for that kind of diversity and niche programming, and disrupt the status quo of relative homogeneity.

[1] Promoting the Availability of Diverse and Independent Sources of Video Programming, *Notice of Proposed*

Although program carriage contracts are generally confidential, there is enough in the public record to demonstrate that MVPDs are free to, and do, either require that programmers not distribute their programming online (or distribute it online only subject to restrictive conditions), or refuse to carry programming networks that do distribute their programming online.[2]

The use of ADM provisions with respect to online video is an area of obvious concern. MVPDs are free to prohibit programmers from distributing programming online at all, or only subject to significantly limited windows. In addition, the use of MFN clauses in programming contracts can also harm consumers and programmers. These clauses state that an MVPD who is able to demand such a provision automatically benefits from terms another distributor is able to secure terms that might not only relate to programming costs, but business models. MFNs can be used to simply assure that a particular MVPD gets the best possible deal in terms of the price paid for programming on a per-subscriber basis. Most troubling are MFNs that keep the marketplace from evolving, by preventing programmers from offering video in new ways and through new services, or that have the same practical effect as ADMs and keep programming off of online platforms entirely.

Because of these kinds of terms, a programmer might not be able to give a special break to a new entrant in order to promote competition, or to grant an online provider on-demand access to programs, without also granting these rights to an incumbent cable company. Thus, MFNs and ADMs can restrict competition and prevent the market from evolving toward new methods of video distribution and new business models; making it difficult for independent programmers to reach their niche audience.

[2] *See* Letter from TheBlaze, Inc., Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of License and Authorizations, MB Docket No. 14-57 (Feb. 13, 2015).

However, given the complexities of the marketplace it is difficult to conclude that any particular kind of contractual provision is *per se* unreasonable or whether a programmer is "independent" – lacking sufficient leverage in negotiations with incumbent video providers. It may be the case that particular provisions are a result of balanced negotiations, reflecting the interests of both parties. It may also be the case that some kinds of contractual provisions are so likely to harm smaller creators or consumers in the short term that they should be prohibited even if some of them may carry some theoretical, longer-term benefit. Similarly, there are programmers who have sufficient market power in negotiations with MVPDs, yet meet the Commission's proposed definition of "independent programmer." There are also programmers who would fall outside the Commission's proposed definition, but lack sufficient leverage and need the relief this rule is designed to provide. Therefore, the Commission should consider a contextual, rather than bright-line, approach to enforcement of this proposed rule. Focusing on provisions that are a result of large MVPDs exerting their negotiating power over programmers will allow the Commission to open the video marketplace without being overly prescriptive.

II. Imbalances in Bargaining Power Lead to Market Conditions That Place Independent Programmers at a Disadvantage.

Many of the incumbent companies in the traditional cable marketplace have extraordinary leverage over the smaller players they negotiate with. The cable market is two-sided where cable companies negotiate with programming companies to buy their content. In the negotiating process, MVPDs can exert monopsony power over independent programmers. At the same time, larger programmers can use their leverage to obtain favorable terms that ultimately harm independent programmers. These imbalances in bargaining power lead to market conditions that prevent independent programmers from gaining carriage or doing so with unfavorable contract terms.

A. Some MVPDs Can Exert Monopsony Power Over Independent Programmers.

A monopoly exists when a single seller of a good or services has market power, which means it can raise prices at will without being afraid of losing business to competitors. A monopsony, on the other hand, exists when a single buyer has the ability to demand that it pays less for goods or services or is able to extract other kinds of onerous terms, leaving sellers with nowhere else to go, or to face financial ruin if they walk away. In a business negotiation between two companies, contract terms will tend to be mutually beneficial. But when one side has significant leverage as a monopsonist, it can force the other side to "agree" to terms that are disadvantageous in the medium or long term.

MVPDs can exert monopsony power over independent programmers in a number of ways that prevent them from getting carriage or doing so with unfavorable terms. For example, vertically integrated cable companies that produce their own programming have an incentive to favor that programming over similar programming from independent programmers. Many programmers have alleged that they have faced discrimination in this regard.[3] Additionally, some MVPDs will not carry a programmer unless it is already carried by a particular other MVPD, or unless it has already reached a certain level of distribution. It is not difficult to see how this can create "chicken or the egg" kinds of problems for smaller programmers, who might find themselves with no path to nationwide carriage.

The harms to independent programmers can be more straightforwardly economic, as well. Large cable distributors typically enjoy "volume discounts" on the programming they carry. While in an electronic age it is not necessarily cheaper for a programmer to supply a larger cable company with programming instead of a number of smaller cable companies (apart from

[3] *See, e.g.,* The Tennis Channel, Inc. Program Carriage Complaint, File No. CSR-8528-P (July 5, 2010)(Tennis Channel filed a program carriage complaint alleging that Comcast placed its programming in a less favorable tier than similar programming that was vertically integrated with the MVPD.).

transaction costs), larger distributors are able to use their bargaining power (and frequently, their status as must-have distribution platforms) to pay lower rates than other distributors. The harmful effects of anticompetitive volume discounts that result from this kind of leverage can hurt independent programmers, particularly those of diverse or niche interests. This may undermine their business or keep them off the cable dial entirely. Other independent programmers may be tempted to sell to larger conglomerates in a tit-for-tat of consolidation. Such an outcome would be contrary to the Commission's established goal of ensuring that "no single operator can, by simply refusing to carry a programming network cause it to fail."[4]

Monopsony power also presents itself even when an independent programmer is able to get carried through unfavorable contract terms – MFNs and ADMs. MFNs can be used to simply assure that a particular MVPD gets the best possible deal in terms of the price paid for programming on a per-subscriber basis. This could create competitive harms, of course, but provisions such as these are not necessarily the most concerning kinds of MFNs. More troubling are MFNs that keep the marketplace from evolving, by preventing programmers from offering video in new ways and through new services, or that have the same practical effect as ADMs and keep programming off of online platforms entirely. Because of these kinds of terms, an independent programmer might not be able to give a special break to a new entrant or to grant an online provider on-demand access to programs without also granting these rights to an incumbent cable company.

Many independent programmers commented on the Commission's *Notice of Inquiry* highlighting the frequent use of MFNs and ADMs by MVPDs.[5] Independent programmer, beIN

[4] *See, e.g.,* Cable Horizontal and Vertical Ownership Limits, *Fourth Report & Order and Further Notice of Proposed Rulemaking*, 23 FCC Rcd 2134 ¶ 40 (2008).
[5] *See* Comments of beIN Sports LLC, Promoting the Availability of Diverse and Independent Sources of Video Programming, MB Docket No. 16-41 (March 30, 2016) ("beIn Sports Comments"); Comments of Hispanic

Sports LLC, states quite explicitly that "its efforts to grow and serve its historically underserved audience are *frequently hampered* by contractual restrictions in the form of contractual most favored nations clauses."[6] Independent programmers also commented on the common use of ADMs in carriage contracts with MVPDs.[7] Programmers uniformly mentioned the common use of ADMs not to simply describe the marketplace, but discuss it in terms of what types of MVPD behavior limits their ability to provide diverse programming.[8] Overall, the Commission correctly acknowledges that MVPDs are increasingly using both MFNs and ADMs in their contracts with programmers and that these contract provisions have negative consequences on the diversity of programming in the video marketplace.[9]

Independent programmers also face harms from MVPDs outside of MFNs and ADMs. For example, MVPDs that engage in the practice of 'neighborhooding,' where an MVPD groups channels with similar programming adjacent to each other in its channel lineup, have the ability to leave independent programmers out of these neighborhoods. Neighborhooding makes it easier for consumers to find channels with similar programming but more difficult to find channels that are not located within the neighborhood. Neighborhooding also allows MVPDs to favor their own programming by placing independent programmers outside of the neighborhood. Indeed, Bloomberg filed a complaint against Comcast for not placing it in news neighborhoods it had

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Information and Telecommunications Network, Inc., Promoting the Availability of Diverse and Independent Sources of Video Programming, MB Docket No. 16-41 (March 30, 2016) ("HITN Comments"); Comments of INSP, LLC., Promoting the Availability of Diverse and Independent Sources of Video Programming, MB Docket No. 16-41 (March 30, 2016) ("INSP Comments").

[6] beIn Sports Comments at 1 (emphasis added).

[7] HITN Comments at 4; Comments of TheBlaze Inc.,, Promoting the Availability of Diverse and Independent Sources of Video Programming, MB Docket No. 16-41, at 5-6 (March 301, 2016) ("The Blaze Comments); Comments of Altitude Sports & Entertainment, Outdoor Channel, Sportsman Channel and World Fishing Network, Promoting the Availability of Diverse and Independent Sources of Video Programming, MB Docket No. 16-41, 11 (March 30, 2016) ("Altitude Sports & Entertainment et. al Comments").

[8] *See* Altitude Sports & Entertainment et. al Comments at 11.

[9] NPRM, 31 FCC Rcd at 11355 ¶ 7 (2016).

created consistent with a condition of its merger with NBCUniversal.[10] While Bloomberg ultimately won its dispute with Comcast at the FCC after a drawn-out battle,[11] independent programmers who do not have the financial resources to engage in channel placement disputes over neighborhooding are still harmed by this practice. Another channel placement practice MVPDs can impose on independent programmers is tiering. Tiering allows MVPDs to place independent programmers on less desirable channel tiers. Consumers are less likely to purchase expanded tiers outside of an MVPDs basic tier service, making it more difficult for independent programmers to generate a sustainable viewership.

Independent programmers are also harmed by the set-top box market. The set-top box allows MVPDs to act as gatekeepers to the video market, limiting the distribution opportunities for independent programmers.[12] Opening up the set-top box market will provide independent programmers with additional avenues to distribute their content. Further, in a competitive set-top box market, independent programmers would not have to rely exclusively on their ability to gain carriage on an MVPD but rather on the merits of its content and ideas, which would help level the playing field with larger programmers.

B. Larger Programmers Can Also Use Their Leverage to Obtain Favorable Terms That Ultimately Harm Independent Programmers.

Large programmers play a significant role in the negotiating process with MVPDs. There could be instances when programmers have leverage over MVPDs that have negative effects on third parties including independent programmers. One example is bundling, a negotiating tool where large programmers are able to force MVPDs to carry less desirable programming in order

[10] *See* Bloomberg L.P. v. Comcast LLC, Complaint, MB Docket No. 11-104 (June 13, 2011).
[11] *See* Bloomberg L.P. v. Comcast LLC, *Memorandum Opinion and Order*, 28 FCC Rcd 14346 (2013).
[12] *See* Comments of The Townsend Group, Expanding Consumer's Video Navigation Choices, MB Docket No. 16-42, at 2 (April 22, 2016); Comments of GFNTV, Expanding Consumer's Video Navigation Choices, MB Docket No. 16-42, at 2 (April 22, 2016) (explaining the need for a path to greater distribution for diverse and independent programmers).

to access their popular programs.[13] The National Cable Television Cooperative ("NCTC") reported that it negotiated master agreements with nine of the largest media groups including Disney/ESPN, Fox, Comcast/NBCU, Turner, Viacom, AETN, AMC, Discovery, and Scripps, which required the bundling of 65 of the 115 individual networks to be carried.[14] Therefore, a cable company who opts in to the NCTC deal with these programmers is forced to carry 65 networks.[15] This practice forces small and midsize cable companies to devote much of their capacity to carrying undesired networks at the expense of independent programmers. Similarly, the use of minimum penetration standards by large programmers limits the capacity available for MVPDs to carry independent programming.[16]

Large programmers also exert leverage over MVPDs through retransmission consent, the process where cable operators must negotiate with broadcasters in order to carry their programming.[17] The retransmission consent marketplace was originally created to protect the rights of local broadcasters, who often lacked leverage against monopolistic cable companies.[18] However, the marketplace has changed since then. While cable operators are still dominant, consolidation among programmers and broadcasters and increasing video competition has turned carriage negotiations from routine business to high-stakes negotiations. Consequently, retransmission consent fees have increased over the years with SNL Kagan projecting it will

[13] Promoting the Availability of Diverse and Independent Sources of Video Programming, *Notice of Inquiry*, 31 FCC Rcd 1610, 1616-17 ¶ 15 (2016).
[14] Comments of the American Cable Association, Promoting the Availability of Diverse and Independent Sources of Video Programming, MB Docket No. 16-41, at 14 (March 30, 2016) ("ACA Comments").
[15] *See id* at 14-15.
[16] ACA Comments at 26; Comments of ITTA, Promoting the Availability of Independent Sources of Video Programming, MB Docket No. 16-41, at 7 (March 30, 2016).
[17] *See generally* FCC, Retransmission Consent, *available at* https://www.fcc.gov/media/policy/retransmission-consent.
[18] *See* Implementation of Section 103 of the STELA Reauthorization Act of 2014, *Notice of Proposed Rulemaking*, 30 FCC Rcd 10237, 10238 ¶ 2 (2015).

reach $11.6 billion in 2022.[19] Large programmers with broadcast stations are therefore able to extract large sums of money from MVPDs turning the retransmission consent process into an additional revenue stream. This hinders the ability of independent programmers to negotiate carriage agreements with MVPDs on the same playing field as large programmers that own broadcast stations.

When retransmission consent negotiations come to a standstill, large programmers have another negotiating tool at their disposal – programming blackouts. The FCC's rules do not prevent broadcasters from timing the expiration of contracts to coincide with marquee programming events, such as the Super Bowl, or other events of significant public interest. This timing only enhances large programmers' leverage turning users against the MVPDs and harming their subscriber numbers. Blackouts remain a persistent threat, harming consumers by blacking out desirable content in numerous markets. A DirecTV dispute in Utah, for example affected 200,000 subscribers.[20] In 2013, Time Warner Cable alleged that its dispute with CBS lead to the loss of 306,000 subscribers due to the broadcaster blacking out its programing.[21] In a recent carriage dispute with Charter Communications, NBCUniversal threatened to blackout its broadcast network along with certain cable networks, which would have affected 17 million Charter subscribers.[22] The ability to use blackouts, potentially affecting millions of consumers, is another bargaining chip that is not afforded to independent programmers.

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[19] *See* Mike Farrell, Kagan: Retrans Fees to Reach $11.6b by 2022, Multichannel News (June 29, 2016), *available at* http://www.multichannel.com/news/networks/kagan-retrans-fees-reach-116b-2022/406026.

[20] Daniel Frankel, After 1-Day blackout, Dish and Tegna strike long-term retransmission agreement, *available at* FierceCable (Oct. 12, 2015), http://www.fiercecable.com/cable/after-1-day-blackout-dish-and-tegna-strike-long-term-retransmission-agreement.

[21] Joe Flint, Time Warner Cable loses 306,000 subscribers, cites fight with CBS, Los Angeles Times (Oct. 31, 2013) *available at* http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-time-warner-cable-cbs-earns-20131031-story.html.

[22] Mike Snider, NBCUniversal and Charter extend talks averting pay-TV blackout, USA Today (Dec. 31, 2016), *available at* http://www.usatoday.com/story/tech/news/2016/12/31/nbcuniversal-and-charter-talks-avoid-blackout/96047572/.

C. The True Harm is Not Caused by Specific Kinds of Contract Terms Per Se, But by Exerting Leverage in an Unbalanced Negotiation.

Thus, the harm to independent programmers is not caused by the presence of unconditional MFNs or unreasonable ADMs per se, but by any contract terms or practices that are the result of exerting leverage in an unbalanced negotiation. To truly provide relief to independent programmers in the video marketplace, the Commission must focus on the ways in which large programmers and MVPDs use their market power to create a programming bottleneck, which prevents independent programmers from reaching their audience. These terms and practices preserve the dominant market position of MVPDs and large programmers.

It is important to note, not all MFNs are inherently harmful to independent programmers. There are many legitimate business reasons to include MFNs in a contract between programmers and MVPDs. For example, a programmer might give an exclusive to an MVPD and get more from one provider than it could get from the market as a whole. A programmer may also include an MFN as part of marketing and promotion campaigns. In contrast, MFNs that exist solely because of market power of distributors are bad. Programmers have no choice because of monopsony market power. Less-dominant distributors are denied access to programming.

III. The Commission Should Consider Crafting a Flexible Rule to Target Undesirable Practices.

As described above, independent programmers are harmed by contract terms that appear as a result of leverage. The mere existence of an MFN or ADM does not necessarily lead to harms to independent programmers, and MFNs and ADMs are not the only contract terms that can lead to harms. Therefore, the Commission should recognize that a bright line rule prohibiting MFNs and ADMs as applied to independent programmers could be simultaneously underinclusive and overinclusive. Independent programmers who are larger or have broadcasting

rights, but no bargaining power would not be covered by a bright line rule. Conversely, there are programmers who meet the definition of independent programmer, no matter how it's defined, but have enough market power and leverage in negotiating with MVPDs. Similarly, MVPDs differ in the amount of bargaining power they have as against any particular programmer. Given that independent programmers need protection from contract terms and practices that are the result of imbalances in negotiating power, the Commission should consider examining contract terms and practices on a case by case basis, and prohibit those that are purely a result of market power.

A. The Harms the Commission Seeks to Mitigate Would not be Adequately Addressed by a Bright Line Rule.

Constructing a bright line rule would require the Commission to first define independent programmer. As evidenced by the many questions posed in the NPRM, accurately defining independent programmer in a manner that protects the programmers who need it most proves to be difficult.[23] In the NPRM, the Commission recognizes that the definition of independent programmer proposed in the *Notice of Inquiry*, "a programmer that is not vertically integrated with an MVPD," is too broad because it would include established programmers that have sufficient bargaining leverage in carriage negotiations.[24] In attempts to ensure that the rule protects only those independent programmers who need relief from large incumbent MVPDs, the Commission proposes defining independent programmer by annual gross revenue, possession of broadcasting rights, and affiliation with MVPDs and movie studios.[25] The complexity of the questions posed in the Commission's attempt to define independent programmer narrowly,

[23] The Commission clearly grapples with the task of properly defining independent programmer, suggesting many metrics that might be able to identify programmers without sufficient leverage in negotiations. Public Knowledge suggests that the Commission examine multiple factors that indicate how much leverage a programmer and MVPD has in carriage negotiations instead of drafting a bright-line rule that could possible benefit programmers who have sufficient leverage and leave out those that do not. NPRM, 31 FCC Rcd at 11360-62 ¶¶ 15-17 (2016).
[24] NPRM, 31 FCC Rcd at 11360-61 ¶ 16 (2016).
[25] NPRM, 31 FCC Rcd at 11361-62 ¶ 17 (2016).

demonstrates that a bright line rule may not sufficiently protect all of the independent programmers who need it, while simultaneously protecting those who do not. Instead, the factors the Commission lists can be part of an analysis of whether a programmer has bargaining power, as discussed below.

No matter how the Commission defines independent programmer, there will inevitably be programmers without sufficient leverage who are not protected by the rule. Thus, the Commission should consider simply applying the rule to the class of programmers the Commission itself identified as needing relief in the market, those lacking sufficient bargaining leverage. Gathering sufficient information in a complaint to determine whether there is an imbalance in negotiating leverage is the best way to ensure that the proposed rule applies to programmers who need it, opening up the video market for diverse voices. While a case-by-case approach will protect more independent programmers, a bright line rule is more efficient to administer. The Commission should consider whether the ease in administration is worth the inefficiencies that accompany applying a bright line rule.

Moreover, there is value in allowing private parties to contract freely, when doing so does not harm independent programmers. There is no doubt that MFNs and ADMs can have anticompetitive effects, so much so that the Department of Justice has noted the anticompetitive problems that MFNs can cause. For example, then-Deputy Assistant Attorney General, Antitrust Division Fiona Scott-Morton noted that when an "MFN is in place, the incumbent is contractually entitled to the low price of the entrant. Thus, the entrant can never create an advantage vis-a-vis the incumbent, and entry is blocked."[26] However, MFNs can provide benefits

[26] Presentation by Fiona Scott-Morton, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Contracts that Reference Rivals, at 13 (Apr. 5, 2012), http://www.justice.gov/atr/file/518971/download. Additionally, the presentation argues that in some market conditions, smaller buyers who obtain MFNs can actually be harmed by the practice. Id. at 11-12.

to the contracting parties. Under the right circumstances, MFNs can reduce delays in transacting and reduce transaction costs.[27] Given the potential efficiencies generated by MFNs and similar contract provisions, it is imperative that the Commission only prohibit them when there are clear anticompetitive effects on the market. To best achieve this end, the Commission should look beyond individual contract terms and programmers of a particular size, however defined.

B. Implementing a Contextual Approach is Feasible and Promotes Competition.

Implementing a case-by-case analysis of potential rule violations would not be significantly more difficult to administer than a bright line rule. There are clear ways that the Commission can determine when imbalances in leverage exist. For example, if one distributor requires an MFN or ADM and the only difference between it and a smaller distributor that does not, is the number of customers the larger distributor can reach, then it would appear that the additional contract terms are purely an exercise of the distributor's market power and should be prohibited as applied to those programmers who do not have sufficient negotiating leverage.

Further, in response to the *Notice of Inquiry*, Public Knowledge suggested factors that the Commission can look to when examining the appropriateness and potential negative impacts of contractual terms on independent programmers. The Commission should look to disparate bargaining power in negotiations, the parties' relative market power, structure and business model of the companies involved, and unbargained for benefits, among other indicators.[28] The different factors the Commission proposed as relevant to whether a programmer is independent are also relevant to whether a programmer has sufficient bargaining power.[29] By requiring

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[27] Jonathan B. Baker & Judith A. Chevalier, The Competitive Consequences of Most–Favored–Nation Provisions, Antitrust, Spring 2013, at 21–23, *available at* http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1280 & context=facsch_lawrev.

[28] *See* Comments of Public Knowledge, Promoting the Availability of Diverse and Independent Sources of Video Programming, MB Docket No. 16-41, 23 (March 30, 2016) ("PK Comments").

[29] This includes broadcaster affiliation, annual gross revenue, and MVPD affiliation. NPRM, 31 FCC Rcd at 11360-62 ¶¶ 15-17 (2016).

complainants to address these factors when alleging violations of the proposed rule, the Commission can mitigate the harms these provisions cause in the market, while allowing willing private parties to negotiate without interference.

If the Commission determines that enforcing the rule on a case-by-case basis would make enforcement impractical, it could implement a two-prong approach to narrowing the applicability of the rule. A bright-line would establish a rebuttable presumption that all programmers below a particular size or revenue threshold have insufficient leverage against incumbent MVPDs, while larger programmers could establish their lack of leverage through a detailed complaint. Regardless of how the final rule is structured, enforcement should not be based on the motivation of the MVPD, like the prohibition against discrimination under the Commission's program carriage rules, but on external factors.[30]

III. Conclusion

Congress charged the Commission "to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, ... and to spur the development of communications technologies."[31] The Commission should continue to prohibit anticompetitive practices to promote diverse viewpoints in the video marketplace. For the foregoing reasons, Public Knowledge encourages the Commission to move forward with all due speed to provide relief to independent programmers in their negotiations with larger MVPDs.

[30] Program Carriage rules prohibit discrimination "on the basis of affiliation or non-affiliation of the vendors," requiring the Commission to probe the motivations of the MVPD. 47 CFR 76.1301(c). Public Knowledge cautions against using such an approach here.
[31] 47 U.S.C. § 548(a).

Respectfully submitted,

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/s/ Dallas Harris

Public Knowledge
1818 N Street N.W.
Suite 410
Washington, DC 20036